Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

# Appeals

## DECISION AND REASONS

Appeal No. AP-2012-034

Federal-Mogul Canada Limited

v.

President of the Canada Border Services Agency

*Decision and reasons issued*
*Tuesday, November 10, 2015*

Canada

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IN THE MATTER OF an appeal heard on September 16, 2015, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated June 21 and 27, 2012, with respect to requests for re-determination pursuant to subsection 60(4) of the *Customs Act*.

**BETWEEN**

**FEDERAL-MOGUL CANADA LIMITED** **Appellant**

**AND**

**THE PRESIDENT OF THE CANADA BORDER SERVICES AGENCY** **Respondent**

## DECISION

The appeal is dismissed.

Ann Penner
Ann Penner
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: September 16, 2015

Tribunal Member: Ann Penner, Presiding Member

Counsel for the Tribunal: Peter Jarosz
Laura Little

Acting Supervisor, Registry Operations: Haley Raynor

**PARTICIPANTS:**

| **Appellant** | **Counsel/Representative** |
|---|---|
| Federal-Mogul Canada Limited | Richard A. Wagner |

| **Respondent** | **Counsel/Representative** |
|---|---|
| President of the Canada Border Services Agency | Andrew Gibbs |

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# STATEMENT OF REASONS

## INTRODUCTION

1. This is an appeal filed by Federal-Mogul Canada Limited (F-MC) on August 30, 2012, pursuant to subsection 67(1) of the *Customs Act*[1] from decisions made on June 21 and 27, 2012, by the President of the Canada Border Services Agency (CBSA), made pursuant to subsection 60(4), with respect to requests for re-determination of tariff classification.

2. The goods in issue are various aftermarket automobile parts, including lights, fuel pump and parts, bearings, electrical parts, wipers and parts, suspension parts, steering parts, seals engine parts, gaskets, and brake assemblies and parts. The goods in issue are used in the repair of automobiles, light trucks and commercial vehicles.

3. The issue in this appeal is whether the goods in issue, in addition to being classified under various tariff items in Chapters 1 to 97 of the schedule to the *Customs Tariff*,[2] may also be classified under tariff item No. 9903.00.00 as articles and materials that enter into the cost of manufacture or repair of, and articles for use in, chassis and parts and accessories thereof, and thereby benefit from duty-free treatment.

## BACKGROUND

4. The goods in issue were imported into Canada between January 1, 2009, and September 21, 2011.

5. On September 20, 2010, the CBSA notified F-MC that a trade compliance verification was being conducted pursuant to section 42 of the *Act*.[3]

6. On June 15, 2011, the CBSA issued its final trade compliance verification decision under section 59 of the *Act*. It found that the goods in issue imported between January 1 and December 31, 2009, were not eligible for duty-free treatment under tariff item No. 9903.00.00. As a result, the CBSA instructed F-MC to submit corrections for all transactions of the same goods from January 1, 2009, to June 15, 2011.[4]

7. On June 19 and October 24, 2011, F-MC submitted requests for re-determination pursuant to section 60 of the *Act* with respect to the transactions at issue in the CBSA's trade compliance verification decision.

8. On April 20, 2012, the CBSA issued preliminary decisions denying F-MC's requests for re-determination. On June 21 and 27, 2012, the CBSA issued final decisions that affirmed its preliminary determinations and indicated that amounts payable were due.

9. F-MC filed the present appeal with the Canadian International Trade Tribunal (the Tribunal) on August 30, 2012.

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1. R.S.C. 1985 (2d Supp.), c. 1 [*Act*].
2. S.C. 1997, c. 36.
3. Exhibit AP-2012-034-07A at para. 6, Vol. 1.
4. *Ibid.* at para. 6; Exhibit AP-2012-034-27A, tab 20, Vol. 1E.

**PROCEDURAL HISTORY**

10. On April 25, 2013, the Tribunal granted F-MC's request, on consent of the parties, to hold the matter in abeyance pending the decision of the Federal Court of Appeal (FCA) on an appeal of the Tribunal's decision in *Marmen Énergie Inc. and Marmen Inc. v. President of the Canada Border Services Agency*[5], as it also dealt with tariff item No. 9903.00.00.

11. On May 7, 2014, the FCA issued its decision in *Marmen-Énergie Inc. v. Canada (Border Services Agency*[6] and remanded the matter back to the Tribunal. The Tribunal has yet to issue its decision on remand.

12. On July 2, 2014, the Tribunal requested the parties' views on how to proceed, given the FCA's decision. On July 16, 2014, F-MC advised that it would like to proceed with the appeal. The Tribunal subsequently scheduled the hearing for February 12, 2015.

13. On November 26, 2014, the CBSA asked to update its brief and file additional documents or case law, if necessary, due to the passage of time since the original filing and in light of the FCA's decision in *Marmen FCA*. F-MC objected, in part, arguing that, since the CBSA had consented to the abeyance, the passage of time was not a valid reason for updating its brief and that any changes should be limited to addressing the decision in *Marmen FCA*.

14. On December 8, 2014, the Tribunal granted the CBSA's request and invited both parties to submit updated briefs and additional documents or authorities. The CBSA filed its updated brief and additional documents on January 9, 2015.

15. On January 9, 2015, F-MC requested additional time to file its updated brief and, as a result of this extension, a postponement of the hearing. The CBSA objected to F-MC's request.

16. On January 14, 2015, the Tribunal granted F-MC's request and rescheduled the hearing for March 31, 2015. On February 13, 2015, F-MC filed an extensively revised brief with additional documents.

17. On March 19, 2015, F-MC's newly appointed counsel requested a postponement of the hearing until June 2015. On March 24, 2015, the Tribunal granted the request and set June 25, 2015, as the new hearing date.

18. On May 6, 2015, the CBSA asked that the hearing be rescheduled once again. On May 8, 2015, the Tribunal granted the CBSA's request to reschedule the hearing, and it was scheduled for July 10, 2015.

19. On June 15, 2015, the Tribunal asked parties to provide submissions regarding the applicability of other tariff provisions, i.e. tariff item Nos. 9961.00.00, 9962.00.00 and 9963.00.00. In response, the parties asked that the hearing be rescheduled to allow for more time to prepare the requested submissions. The Tribunal agreed and set the hearing for September 16, 2015. F-MC provided the requested submissions and indicated that the other tariff provisions were not applicable.[7]

20. Ten days prior to the hearing, F-MC requested that additional exhibits be placed onto the record. The CBSA objected on the grounds that the exhibits were irrelevant to the issues at hand and should have been filed earlier with F-MC's brief. The Tribunal allowed the exhibits to remain on the record, noting that

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5. (14 December 2012), AP-2011-057 and AP-2011-058 (CITT) [*Marmen CITT*].
6. 2014 FCA 118 (CanLII) [*Marmen FCA*].
7. The CBSA indicated that it would not be providing any additional submissions.

F-MC had retained new counsel who was apparently not aware of these documents when F-MC's previous counsel filed the brief.

21. The hearing was held on September 15, 2015. Two witnesses testified on behalf of F-MC: Mr. Brent Nakonechni, Division Sales Manager for F-MC, and Ms. Lynn Mayne, North American Trade Compliance Manager, Federal-Mogul Corporation. The CBSA did not call any witnesses.

### Procedural Matter Regarding the Affidavit of Lynn Mayne

22. As part of its Brief, F-MC filed an affidavit sworn by Ms. Mayne.[8] She stated that the CBSA's client services repeatedly informed her that it was appropriate to classify the goods in issue under tariff item No. 9903.00.00, as confirmed by the detailed adjustment statements that were previously issued by the CBSA.

23. The CBSA requested that the Tribunal strike Ms. Mayne's affidavit from the record. In its view, any purported erroneous information that the CBSA may have given to F-MC was irrelevant in this appeal. In the alternative, the CBSA requested the opportunity to cross-examine Ms. Mayne.

24. Given that Ms. Mayne was scheduled to appear as a witness at the hearing, the Tribunal directed in its letter dated September 14, 2015, that it would leave Ms. Mayne's affidavit on the record. However, the Tribunal also urged parties to focus on facts and arguments related to the correct tariff classification of the goods in issue, as opposed to past representations that may or may not have been made by the CBSA.

## LEGAL FRAMEWORK

### Customs Tariff

25. The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*, which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization (WCO).[9] The schedule is divided into sections and chapters, with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items.

26. Subsection 10(1) of the *Customs Tariff* provides that the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*[10] and the *Canadian Rules*[11] set out in the schedule.

27. The *General Rules* comprise six rules. Classification begins with Rule 1, which provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the other rules.

28. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and*

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8. Exhibit AP-2012-034-07B, tab 4, Vol. 1A.
9. Canada is a signatory to the *International Convention on the Harmonized Commodity Description and Coding System*, which governs the Harmonized System.
10. S.C. 1997, c. 36, schedule [*General Rules*].
11. S.C. 1997, c. 36, schedule.

*Coding System*[12] and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,[13] published by the WCO. While classification opinions and explanatory notes are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.[14]

29. Chapter 99 of the *Customs Tariff*, which includes tariff item No. 9903.00.00, provides special classification provisions which allow for certain goods to be imported into Canada duty-free. As none of the headings of Chapter 99 are divided at the subheading or tariff item level, the Tribunal need only consider, as the circumstances may require, Rules 1 through 5 of the *General Rules* in determining whether goods may be classified in that chapter.[15] Moreover, since the Harmonized System reserves Chapter 99 for special classifications (i.e. for the exclusive use of individual countries), there are no classification opinions or explanatory notes to this chapter.

**Official Languages Act**

30. Section 13 of the *Official Languages Act*[16] stipulates that the English and French versions of federal legislation, such as the *Customs Tariff*, are equally authoritative.

31. When faced with differences in the English and French versions of the *Customs Tariff*, the Tribunal has looked to the courts for principles and tools of bilingual interpretation, such as the shared meaning rule.[17] The Tribunal has also followed the courts' use of the modern contextual approach to statutory interpretation which provides that ". . . the words of an Act are to be read in their *entire context* and in their *grammatical and ordinary sense* harmoniously with the *scheme* of the Act, the *object* of the Act, and the *intention* of Parliament"[18] [emphasis added]. This will be further discussed below.

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12. World Customs Organization, 2d ed., Brussels, 2003.
13. World Customs Organization, 5th ed., Brussels, 2012.
14. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17, where the Federal Court of Appeal interpreted section 11 of the *Customs Tariff* as requiring that explanatory notes be respected unless there is a sound reason to do otherwise. The Tribunal is of the view that this interpretation is equally applicable to classification opinions.
15. However, Note 1 to Chapter 99 provides that the rule of specificity in Rule 3 (a) of the *General Rules* does not apply to the provisions of Chapter 99. This reflects the fact that classification in Chapters 1 to 97 and Chapter 99 is not mutually exclusive.
16. R.S.C., 1985, c. 31 (4th Supp.).
17. *Great West Van Conversions Inc. v. President of the Canada Border Services Agency* (30 November 2011), AP-2010-037 (CITT) at para. 50.
18. *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, 1998 CanLII 837 (SCC) at para 21; *Canada Trustco Mortgage Co. v. Canada*, [2005] S.C.R. 601, 2005 SCC 54 (CanLII) at para. 10; *R. v. Steele*, [2014] 3 S.C.R. 138, 2014 SCC 61 (CanLII) at para. 23; *BalanceCo v. President of the Canada Border Services Agency* (3 May 2013), AP-2012-036 (CITT) at para. 36, aff'd in *Balanceco Canada v. Canada (Border Services [Agency])*, 2014 FCA 132 (CanLII); *EMCO Electric International - Electrical Resource International v. President of the Canada Border Services Agency* (25 June 2009), AP-2008-010 (CITT) at para. 29.

## Tariff Classification Provisions at Issue

32. The relevant provisions of *Customs Tariff*, tariff item No. 9903.00.00 in French and English, provide as follows:

| | |
|---|---|
| Articles and materials that enter into the cost of manufacture or repair of the following, and articles for use in the following [**the introductory clause**]: | Articles et matières qui entrent dans le coût de fabrication ou de réparation des produits suivants, et articles devant servir dans ce qui suit [**la clause introductive**] : |
| . . . | [...] |
| Tractors powered by an internal combustion engine, not including tractors of the type used on railway station platforms, road tractors for semi-trailers or tractors of a kind for hauling logs (log skidders), and buckets, shovels, grabs, grips, bulldozer or angledozer blades, scarifiers, pneumatic tires and inner tubes for use therewith and for use on the farm [**the tractor subclause**]; *chassis fitted with engines therefor, cabs therefor, and parts and accessories thereof, other than bumpers and bumper parts, safety seat belts and suspension shock-absorbers* [**the chassis subclause**]; | Tracteurs actionnés par un moteur à combustion interne, sauf les chariots-tracteurs des types utilisés dans les gares, les tracteurs routiers pour semi-remorques et les tracteurs des types débusqueurs de billes, et godets, bennes, bennes-preneuses, pelles, grappins, pinces, lames de bouteurs (bulldozers) ou de bouteurs biais (angledozers), scarificateurs, pneumatiques et chambres à air étant utilisés conjointement avec ces tracteurs et pour usage dans la ferme [le sous-alinéa relatif aux tracteurs]; *châssis équipés de leur moteur pour ces tracteurs, cabines pour ces tracteurs, et parties et accessoires pour ces tracteurs, autres que pare-chocs et leurs parties, ceintures de sécurité et amortisseurs de suspension* [**le sous-alinéa relatif aux châssis**]; |
| . . . | [...] |

[Emphasis added]

## POSITIONS OF PARTIES

### F-MC's Position

33. F-MC submitted that a plain reading of the text of tariff item No. 9903.00.00 supports the inclusion of the goods in issue as parts of automotive chassis. In its view, the goods in issue are "[a]rticles and materials that enter into the cost of manufacture or repair of . . ." or ". . . articles for use in . . ." those articles mentioned in the chassis subclause and should be classified thereunder, as the CBSA did in response to F-MC's numerous adjustment requests between 2005 and 2011.

34. F-MC also asserted that the chassis subclause is not restricted to farm vehicles such as tractors because the three relevant parts of tariff item No. 9903.00.00 (i.e. the introductory clause, the tractor subclause and the chassis subclause) are separated by semi-colons. In its view, the semi-colons give each clause a meaning of its own. Accordingly, the chassis subclause is not related to the preceding tractor subclause because the two are separated by a semi-colon.[19]

35. Similarly, F-MC argued that there is no agricultural use requirement in tariff item No. 9903.00.00, given the inclusion of other items such as "[m]achinery for filling bottles, for use in the beverage

19. Exhibit AP-2012-034-07A at para. 28, Vol. 1.

industry . . .” and “[w]indmills” and in light of its view of the decision in *Marmen FCA*.[20] F-MC argued that Parliament did not intend to limit the goods listed in tariff item No. 9903.00.00 to “. . . agriculture, agribusiness and farming use items.”[21]

36. Regarding the French and English versions of tariff item No. 9903.00.00, F-MC argued that they are irreconcilable, even though the French version of the chassis subclause expressly refers to chassis “*pour ces tracteurs*” (for those tractors).[22] Moreover, F-MC submitted that there is no shared meaning between “therefor” and “*pour ces tracteurs*”, and, as such, the general rules of statutory interpretation should be applied. It argued that there is a fundamental inconsistency between the two versions and that, even if one version is said to be narrower than the other, it should not necessarily be preferred if it would run contrary to the intent of Parliament.[23]

37. At the hearing, F-MC argued that the discrepancies between the French and English versions and between the official version of the schedule to the *Customs Tariff* and the online version were drafting errors in the official text and the CBSA attempted to “clarify” the provisions in the online publication.[24]

**CBSA’s Position**

38. The CBSA submitted that the goods in issue cannot be classified under tariff item No. 9903.00.00, as there is no evidence on the record to demonstrate that they have an agricultural use.

39. The CBSA argued that the agricultural use requirement of tariff item No. 9903.00.00 is demonstrated by the other items that it includes, as well as by its legislative history.[25] In its view, such an interpretation, which was accepted by the Tribunal in *Marmen CITT*, still applies even in the context of *Marmen FCA*.[26]

40. The CBSA also submitted that the chassis subclause is restricted to farm tractors. It argued that the ordinary meaning of the words “thereof” and “therefor” in the English version link the chassis subclause to the tractor subclause. Furthermore, the express reference to “*ces tracteurs*” in the French version confirms its view all the more.[27]

41. Indeed, according to the CBSA, the words “therefor” and “thereof” in the English version (defined as “for that” and “of that” respectively) unambiguously refer to “*ces tracteurs*” in the French version.[28] Therefore, the only discordance between the English and French versions is a difference in structure, clarity

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20. *Ibid.* at para. 25.
21. Exhibit AP-2012-034-32A at para. 61, Vol. 1F.
22. Exhibit AP-2012-034-07A at para. 34, Vol. 1.
23. *Ibid.* at para. 41 See *Bicycles* (11 March 2004), MP-2003-001 (CITT), in which the Tribunal found conflicting language, in that the French version of the *Special Import Measures Act* required the Tribunal to address a single element in its decision (“*importateur*” [importer]), while the English version had two parts to consider (“importer” and “in Canada”). The Tribunal then considered that the meaning must be compatible with the intention of the legislator, which supported the inclusion of “in Canada”.
24. *Transcript of Public Hearing*, 16 September 2015, at 56.
25. Exhibit AP-2012-034-27A at paras. 43-55, Vol. 1E.
26. The CBSA argued that *Marmen FCA* permits this interpretation of tariff item No. 9903.00.00 as long as an explanation is provided by the Tribunal. *Transcript of Public Hearing*, 16 September 2015, at 78.
27. Exhibit AP-2012-034-27A at paras. 16-29, Vol. 1E.
28. *Ibid.* at paras. 24-26.

and scope, with the English version containing generic adverbs and the French version containing specific adverb phrases.

42. Alternatively, the CBSA suggested that, if the English version was taken to be ambiguous, such ambiguity is eliminated by the French version, as it is narrower and clarifies the meaning of the English version as a result. In its view, the texts are reconcilable, and the shared meaning that the goods be used with tractors must be adopted.

43. Additionally, the CBSA, in its written submissions, argued that F-MC failed to prove that the goods in issue ". . . enter into the cost of manufacture or repair of . . ." or are ". . . for use in . . ." chassis and that, therefore, they cannot be classified under tariff item No. 9903.00.00.

## ANALYSIS

44. The parties agreed that the only issue in this appeal is whether the goods in issue qualify for duty-free treatment under tariff item No. 9903.00.00. The parties also agreed that, to resolve that issue, the Tribunal need only determine whether the goods qualified for this treatment under the chassis subclause.

45. The Tribunal's analysis will therefore address whether the chassis subclause is restricted to goods for use in tractors in the context of the French and English versions of tariff item No. 9903.00.00.

### Is the Chassis Subclause Restricted to Goods For Use in Tractors?

46. As noted above, the Tribunal heard and received extensive submissions from both parties on how to reconcile the English and French versions of the chassis subclause, given that the French version of tariff item No. 9903.00.00 explicitly refers to tractors (". . . *châssis équipés de leur moteur pour ces tracteurs . . . et parties et accessoires pour ces tracteurs* . . ."), while the English version does not refer to tractors and uses the words "therefor" and "thereof" instead.

47. Specifically, the parties disputed whether the English words "therefor" and "thereof" refer to the chassis subclause or to the tractor subclause. To resolve this question, both parties looked to general principles of statutory interpretation in order to determine whether the chassis subclause is restricted to goods for use with tractors and, more broadly, whether there is a general agricultural use requirement in tariff item No. 9903.00.00 that limits the goods covered by the chassis subclause.

48. The Tribunal finds that the difference between the French and English versions of the chassis subclause can be reconciled by looking at how the chassis subclause fits into the broader context of tariff item No. 9903.00.00 and, in particular, to its grammatical structure.

49. In the past, the Tribunal has found that a semi-colon ". . . serves to separate two individual and distinct descriptions . . .",[29] a point argued by F-MC as noted above. However, the Tribunal has also

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29. *Bauer Nike Hockey Inc. v. President of the Canada Border Services Agency* (18 May 2006), AP-2005-019 (CITT); *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (29 July 2013), AP-2012-041 and AP-2012-042 (CITT) at para. 45.

employed the FCA's decision[30] that a semi-colon should not be read as a full stop if it separates two phrases and one of those phrases qualifies or modifies the other.[31]

50. In tariff item No. 9903.00.00, the semi-colon does not act as a "full stop". Rather, the Tribunal finds that the structure of the tariff item is best viewed as a list of clauses and subclauses punctuated by semi-colons in order to remain consistent with its statutory context and grammatical structure.

51. Indeed, both parties accept that the introductory clause continues to apply through several semi-colons and down through the list to the tractor subclause and the chassis subclause.[32] Accordingly, the semi-colons cannot be seen as full stops, i.e. periods, as F-MC alleged in its written submissions.[33] If the semi-colon between the tractor subclause and the chassis subclause was read as a full stop, then the introductory clause would only apply to the tractor subclause and not to the chassis subclause.

52. Regarding the tractor subclause and the chassis subclause, the inclusion of the word "*ces*" (those) in the French version of the chassis subclause shows that it is not self-contained and that its meaning can only be discerned on the basis of the preceding text. The use of the English adverbs "thereof" and "therefor" are capable of multiple meanings and could be interpreted as referring either to the *chassis* in the chassis subclause or to the *tractor* in the tractor subclause. Given this ambiguity, the Tribunal prefers the description that is consistent with the French translation, i.e. "thereof" and "therefor" in the English version, as well as "*ces tracteurs*", connect the chassis subclause to the tractor subclause. The existence of a semi-colon separating the chassis subclause from the rest of the provision does not change this connection.

53. Applying this analysis to the goods in issue, F-MC was very clear that the goods in issue have only one function—automotive repair. F-MC was also clear that the goods in issue are made, marketed and sold for that sole purpose. For example, Mr. Nakonechni testified that the goods in issue may only be used as replacement parts for automobiles and trucks. Similarly, the product literature appended to F-MC's brief repeatedly notes that FMC provides replacement parts for car and light- and medium-duty truck applications.

54. Therefore, in light of the above and on the basis of the evidence, the Tribunal finds that the goods in issue are for use in the repair of automobiles and trucks and not for use in the repair of tractors. They cannot be classified under tariff item No. 9903.00.00 as a result.

**Differences in The Customs Tariff on the CBSA's Web site and the Canada Gazette**

55. As an aside, the Tribunal would like to address an issue that arose during this appeal: the apparent differences between the version of the schedule to the *Customs Tariff* (and tariff item No. 9903.00.00 in particular) on the CBSA's Web site and the official version as published in the 1997 version of the *Canada Gazette*, as amended.[34] This issue is particularly important and relevant in an age when the Government

30. *Wolseley Engineered Pipe Group v. Canada (Border Services Agency)*, 2011 FCA 138 (CanLII) at paras. 15-18.
31. *Boss Lubricants v. Deputy M.N.R.* (3 September 1997), AP-95-276 and AP-95-307 (CITT) at 3, in which the Tribunal recognized that semi-colons may serve different functions depending on the statutory context and grammatical structure.
32. *Transcript of Public Hearing*, 16 September 2015, at 50-51, 79.
33. Exhibit AP-2012-034-32A at para. 47, Vol. 1F.
34. *Transcript of Public Hearing*, 16 September 2015, at 31-33, 36-37; Exhibit AP-2012-034-07B, tabs 2-3, Vol. 1A; Exhibit AP-2012-034-07C, tabs 29-30, Vol. 1B.

relies on online dissemination of information and documentation and businesses consult online sources on matters such as tariff classification, a point noted by counsel for both parties in their oral submissions.[35]

56. In this case, the testimony and documentary evidence demonstrate that F-MC relied on the consolidated *Customs Tariff* (and tariff item No. 9903.00.00)—an unofficial consolidation that the CBSA publishes on its Web site several times a year.[36]

57. The testimony and evidence also demonstrate that the text of the consolidated *Customs Tariff* on the CBSA's Web site changed over the course of the appeal. Specifically, different online versions of tariff item No. 9903.00.00 split the chassis subclause from the rest of the provision onto separate lines with varying degrees of spacing.[37] Furthermore, some versions capitalized the first word of the chassis subclause while others did not.[38] In contrast, tariff item No. 9903.00.00 consistently appeared as one "block" of text in the official version of the *Customs Tariff* in the *Canada Gazette*, with capitalization only being used for the first word of the tractor subclause. In other words, nowhere in the official version was the first word of the chassis subclause capitalized.[39]

58. In the Tribunal's view, these differences are unfortunate, as they could be taken by readers of the online schedule to the *Customs Tariff* to mean that the chassis subclause was entirely separate from the tractor subclause for the purposes of tariff classification.

59. Nevertheless, case law is consistent that misrepresentations (oral and written) by the CBSA or other government departments are not relevant in a case such as this.[40] Any typographical errors[41] or spacing issues, such as those on the CBSA's consolidated version of tariff item No. 9903.00.00, are simply clerical issues or even errors made as documents are uploaded to the Internet, and issues or errors for which the Tribunal cannot grant relief as it is not a court of equity. Any concerns about perceived unfairness do not change the fact that the *Customs Tariff*, as published in the *Canada Gazette*, is the authority upon which decisions must be made.

60. However, in the interests of accessibility, fairness and transparency, the Tribunal would urge the CBSA to take care when the text of the *Customs Tariff* is consolidated and published on the its Web site, given the degree to which electronic versions of documents are used by all concerned.

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35. *Transcript of Public Hearing*, 16 September 2015 at 54, 62, 92.
36. See, for example, the 2015 *Customs Tariff* at http://cbsa-asfc.gc.ca/trade-commerce/tariff-tarif/2015/menu-eng.html.
37. Exhibit AP-2012-034-07C at 407 (July 1, 2005, version), 413 (August 1, 2009, version), 422 (October 1, 2012, version), Vol. 1B.
38. Exhibit AP-2012-034-07C at 418 (January 1, 2012, version), Vol. 1B.
39. Exhibit AP-2012-034-09 at 36-37, Vol. 1C.
40. *Volpak Inc. v. President of the Canada Border Services Agency* (20 January 2015), AP-2012-029 (CITT) at para. 87; *Richards Packaging Inc and Duopac Packaging Inc. v. Deputy M.N.R.* (10 February 1999), AP-98-007 and AP-98-010 (CITT) at 5-6; *Jockey Canada Company v. President of the Canada Border Services Agency* (20 December 2012), AP-2011-008 (CITT) at para. 292; *G. Theriault v. President of the Canada Border Services Agency* (12 March 2013), AP-2012-013 (CITT) at para. 35.
41. See, for example, the July 1, 2005, online version of tariff item No. 9903.000 which states "[b]inder *ot* [*sic*] baler twine . . ." [emphasis added], which has been corrected in subsequent versions. Exhibit AP-2012-034-07C at 406, Vol. 1B.

**SUMMARY**

61. For the foregoing reasons, the Tribunal finds that the goods in issue do not qualify for classification under the special provisions of tariff item No. 9903.00.00.

**DECISION**

62. The appeal is dismissed.

Ann Penner
Ann Penner
Presiding Member